

Message Text

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ACTION STR-05

INFO OCT-01 IO-13 ISO-00 STRE-00 AGRE-00 CEA-01
CIAE-00 COME-00 DODE-00 EB-08 FRB-03 H-01 INR-07
INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01 AID-05
SS-15 ITC-01 TRSE-00 USIA-06 PRS-01 SP-02 FEAE-00
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USMTN

STR FOR ACTION

STR PASS CODEL

E.O. 11652: N/A
TAGS: MTN, ETRD, SZ
SUBJECT: DISCUSSION WITH SWISS ON NON-TARIFF MEASURES

1. SUMMARY: U.S. DEL HAD FRANK AND USEFUL EXCHANGE WITH
SWISS REP ON A WIDE-RANGE OF NTM TOPICS, INCLUDING
RELATIONSHIP OF GATT TO CODES (ON WHICH SWISS INTEND TO TABLE
A DISCUSSION PAPER), STANDARDS, LICENSING, QR'S, AND CUSTOMS
VALUATION. END SUMMARY.

2. AT SWISS REQUEST, U.S. DEL (NEWKIRK) MET WITH SWISS
REPRESENTATIVE (LEMPEN) TO ENGAGE IN DISCUSSION ON A WIDE RANGE
OF NTM TOPICS. LEMPEN WAS EXTREMELY CORDIAL, REVEALING
THAT SWISS POSITION IS CLOSE TO THAT OF U.S. ON MANY ISSUES.

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3. RELATIONSHIP OF GATT TO CODES: THIS TOPIC IS OF MAJOR
IMPORTANCE TO THE SWISS, WITH LEMPEN CAUTIONING THAT IF
THIS TOPIC IS LEFT TO FINAL PHASE OF NEGOTIATIONS PARTICIPANTS
RUN THE RISK OF IMPRECISE DRAFTING WHICH MAY LEAD TO
DIFFICULTIES (E.G. CANADA'S ART 19 ACTION AND THE MFA).
IN HIS VIEW, A UNIFORM APPROACH OR MODEL SHOULD BE ELABORATED

FOR ALL CODES IN ORDER TO AVOID MISINTERPREATION AND FACILITATE DISCUSSION. THE SWISS ARE PREPARING A PAPER ON GOVERNMENT PROCUREMENT FOR DISCUSSION PURPOSES IN WHICH THEY CATEGORIZE TOPICS IN THE FOLLOWING WAYS: (1) AREAS OF GATT NOT COVERED BY CODE OR VICE VERSA; (2) AREAS OF AGREEMENT BETWEEN THE GATT AND CODES; AND (3) AREAS WHERE CODE OBLIGATIONS DIFFER FROM THOSE IN THE GATT. LEMPEN INQUIRED AS TO WHETHER THIS APPROACH WOULD BE USEFUL TO CLARIFY POSSIBLE PROBLEM AREAS AND ENGAGE IN A DISCUSSION. U.S. DEL INDICATED THAT LITTLE WORK HAS BEEN DONE ON THIS TOPIC TO DATE AND THAT ANY CONTRIBUTION WOULD BE USEFUL IN STIMULATING DISCUSSION.

4. STANDARDS: LEMPEN EXPRESSED CONCERN THAT PARAGRAPH 2(A) OF DRAFT STANDARDS CODE WITH REFERENCE TO "UNNECESSARY" OBSTACLE TO TRADE IS IMPRECISE, POSSIBLY PERMITTING THE USE OF STANDARDS AS TRADE OBSTACLES FOR REASONS UNRELATED TO THE STANDARD, E.G. ECONOMIC DEVELOPMENT. AFTER DISCUSSION, HE CONCEDED THAT ANY SHORT FORMULATION OF THIS KEY OBLIGATION, EVEN THE PROPOSED SWISS LANGUAGE, COULD BE OPEN TO BROAD INTERPREATION. HOWEVER, U.S. AND SWISS AGREED THAT WHEN VIEWED IN CODE CONTEXT, I.E., THE OBSTACLE IS "NECESSARY" TO PROTECT HUMAN HEALTH, ETC., MEANING OF PARA 2(A) IS CLEAR. IN ORDER TO AVOID MISUNDERSTANDING, LEMPEN WILL ASK OTHER DELS TO GIVE THEIR INTERPRETATION OF THIS PROVISION. ON PARAGRAPH 2(B), LEMPEN BELIEVES THAT MORE SPECIFIC EXAMPLES WOULD ADD MORE CLARITY TO THESE PROVISIONS. U.S. DOUBTED THAT AGREEMENT COULD BE ACHIEVED ON SUCH SPECIFIC LIMITED OFFICIAL USE

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EXAMPLES AND SPECULATED THAT, IN ANY CASE, EXAMPLES WOULD EMERGE FROM CASE LAW DEVELOPED UNDER THE CODE. LEMPEN ASKED WHETHER THE OBLIGATIONS OF PARA 2(C) REGARDING HARMONIZATION OF NATIONAL STANDARDS COULD BLOCK STANDARDS FROM BEING FORMULATED ON A REGIONAL BASIS. U.S. SHARED SWISS INTERPRETATION, HOWEVER, THAT THE ONLY OBLIGATION IN THE DRAFT STANDARDS CODE IS TO HAVE AN OPEN SYSTEM AND TAKE INTO ACCOUNT FOREIGN COMMENTS, WITH HARMONIZATION BEING A SPIN-OFF PRODUCT OF CODE'S MORE BASIC OBJECTIVES. LEMPEN SAID THAT SWISS HAVE NO PROBLEM WITH THE OBLIGATIONS ENVISAGED IN SECTION 9 OF THE DRAFT CODE, BUT WONDERED IF A CONCEPT OF RECIPROCITY SHOULD BE INCLUDED. HE FORESEES AN INEQUITABLE SITUATION WHERE COUNTRY A OPENS ITS CERTIFICATION TO FOREIGN SUPPLIERS FROM COUNTRY B, BUT COUNTRY B DOES NOT DO LIKEWISE FOR COUNTRY A'S PRODUCTS.

5. LICENSING: LEMPEN QUESTIONED WHETHER THE DRAFT TEXT ON LICENSES TO ADMINISTER IMPORT RESTRICTION (LAIR) COVERS DISCRETIONARY LICENSING. ALTHOUGH SWISS CAN USE CURRENT GATT SECRETARIAT TEXT AS A BASIS FOR NEGOTIATION, LEMPEN COMMENTED THAT LAIR PROVISIONS SHOULD BE MORE EXPLICIT REQUIRING INFORMATION TO BE PROVIDED TO AN IMPORTER AS TO WHY A LICENSE HAS BEEN REFUSED. NEWKIRK SAID THAT IN U.S. VIEW THE LAIR

TEXT WOULD COVER LEGAL DISCRETIONARY LICENSING SYSTEMS, E.G. FOR BALANCE-OF-PAYMENTS REASONS, AND AGREED THAT MORE DETAILED OBLIGATIONS ALONG LINES SUGGESTED BY LEMPEN MIGHT BE USEFUL. LEMPEN DOUBTED THAT WORK ON AUTOMATIC IMPORT LICENSING TEXT COULD BE FOLDED INTO SAFEGUARDS DISCUSSIONS SINCE SOME COUNTRIES MAINTAIN THESE MEASURES FOR PURPOSES UNRELATED TO SAFEGUARDS.

6. QR'S: ACCORDING TO LEMPEN, QR'S ON INDUSTRIAL PRODUCTS ARE OF MINOR IMPORTANCE IN THE NEGOTIATIONS. IN RESPONSE TO A U.S. QUESTION, LEMPEN NOTED THAT ALTHOUGH HE IS NOT AGAINST A MULTILATERAL APPROACH TO QR'S, HE CONSIDERED THE EC AND JAPANESE OBJECTIONS TO PROCEEDING MULTILATERALLY AS VALID. FURTHERMORE, SUCH AN APPROACH IS LIKELY TO GET BOGGED DOWN IN LIMITED OFFICIAL USE

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PROLONGED AND UNUSEFUL DISCUSSIONS AND ACHIEVE LITTLE RESULTS. HE STATED THAT A DIRECT APPROACH ON SPECIFIC QR'S IS MORE LIKELY TO BE SUCCESSFUL.

7. CUSTOMS MATTERS: LEMPEN SAID THAT BECAUSE SWITZERLAND RELIES ON SPECIFIC DUTIES, THEY ARE NOT INTERESTED IN ANY NEW VALUATION RULES SUCH AS THOSE TO BE PROPOSED BY THE EC. HE HAD SEEN THE EC DRAFT PROPOSAL BUT THEIR INTEREST IN THE NEGOTIATION IS LIMITED TO THAT OF AN EXPORTER.

8. DRAFTED BY WALLAR. MCDONALD

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Disposition Approved on Date:
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